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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 647.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

APPELLANT'S BRIEF.

JOHN JUNELL,
CLARK R. FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant,
1300 First Nat'l-Soo Line Building,
Minneapolis, Minnesota.

Of Counsel:
JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, FLETCHER, DORSEY, BARKER & COLMAN.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

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Appellee.

APPELLANT'S BRIEF.

OPINIONS BELOW.

No written opinion was rendered by the trial court in this case. The Supreme Court of Minnesota rendered three opinions. One of these, following oral argument, was handed down June 19, 1936, and is reported in .... Minn. ...., 267 N. W. 519 (R. 105-117). The second opinion was rendered October 9, 1936, in denying appellant's petition for reargument, and is reported in .... Minn. ...., 269 N. W. 37 (R. 117-118). The third, a *per curiam* opinion, was rendered December 11, 1936, upon the second appeal to the Supreme Court of Minnesota, and is reported in .... Minn. ...., 270 N. W. 574.

JURISDICTION.

The jurisdiction of this Court rests upon the provisions of Section 237 of the Judicial Code, as amended (U. S. C., Title 28, Section 344). This appeal is from a judgment* of the Supreme Court of the State of Minnesota reversing with directions an order entered by the District Court of Hennepin County, Minnesota, denying the alternative motion of the appellee for amended findings or for a new trial. The Minnesota Supreme Court held that the application of Section 2337, *Mason's Minnesota Statutes of 1927,* to shares of state bank stock owned by appellant did not deprive appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Thus, there is involved a final judgment of the highest court of the State of Minnesota in which a decision in the suit could be had, where is drawn in question the validity of a statute of that state on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of the statute.

The jurisdiction of this Court, resting upon Section 237 of the Judicial Code, as amended, is therefore established.

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*The finality of this judgment, within the meaning of the cited section of the Judicial Code, is established by **Rio Grande Western Railway Company vs. Stringham** (1915), 239 U. S. 44, 47, and was necessarily recognized by this Court in its refusal to note jurisdiction in the companion appeal taken in this case (February 1, 1937), . U. S. ....

QUESTIONS PRESENTED.

The questions presented by this appeal are:

I. (a) Can more than one state constitutionally impose a property tax on state bank shares;

(b) If only one state can so tax, is it the state of incorporation of the state bank on the one hand, or the state of domicile of the shareholder or the state within which the shares have a business situs on the other hand, which can impose the tax; and

II. Under the facts of this case, have appellant's state bank shares a situs for tax purposes in the states of incorporation of the banks or in Minnesota?

POSITION OF APPELLANT.

The appellant contends that only one state can constitutionally impose a property tax on intangibles and that, in the case of state bank shares, it is the state of incorporation of the bank which can impose the tax, and not the state of domicile of the shareholder or of the business situs of the shares. Appellant further contends that the shares of stock it holds in state banks located without Minnesota have a business situs, if any, at the location of the banks and not in Minnesota.

It is the position of appellant that the Minnesota statute, as construed by the Minnesota Supreme Court to impose a property tax upon appellant's shares of stock in banks organized under the laws of foreign states, is, for the above reasons, unconstitutional under the Fourteenth Amendment to the Constitution of the United States. Appellant does not

here contend that the Minnesota statute is unconstitutional in any way other than in its application to shares of stock in foreign state banks.

STATUTES INVOLVED.

Section 2337, *Mason's Minnesota Statutes of 1927,* is the statute the validity of which is here questioned.

Sections 2115 (1) to 2117, Compiled Laws of North Dakota (1913), as amended (R. 7-13), and Section 2067, Revised Codes of Montana of 1921, as amended (R. 4-7), are the statutes under which North Dakota and Montana have imposed property taxes upon the state bank shares here involved.

All the above statutes are printed in the Appendix to this brief (pages 33 to 40).

STATEMENT OF THE CASE.

First Bank Stock Corporation, the appellant, is a Delaware corporation duly qualified to transact business in the State of Minnesota (R. 15). In 1934 appellant owned a majority of the shares of some eighty-four banks, state and national, located in the Ninth Federal Reserve District (R. 22). Among those banks were certain state banking corporations organized under the laws of Montana and North Dakota (R. 15, 2). None of these banks owned property in Minnesota (R. 15, 2) or did business therein (R. 28). *The statutes of both Montana and North Dakota provide that shares of banks organized thereunder are subject to tax at the location of the banks and not elsewhere* ((R. 15, 6, 8); Compiled Laws of North Dakota (1913), as amended, Secs. 2115 (1)-2117; Revised Codes of Montana of 1921, as amended, Sec. 2067 (Appendix, pages 35, 36)). Accordingly, the states of Montana and North Dakota for the year 1934 imposed property taxes

upon appellant's shares of stock in banks organized under their respective laws. These taxes in the aggregate amounted to $31,216.68 and were paid by appellant (R. 17).

Similarly, pursuant to the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927* (Appendix, page 33), the State of Minnesota for the same year, 1934, assessed against appellant a property tax upon appellant's same shares in said Montana and North Dakota state banks (R. 16). The validity of this assessment is the matter now before this Court.

Thirty-four states of the United States levy ad valorem taxes on shares of banks organized under their laws, regardless of the residences of the owners of those shares (R. 34, 35-59). The statutes of the United States and of the various states of the United States, and particularly the statutes of the states of Montana, North Dakota and Minnesota, prohibit state and national banks from having an office outside the state of incorporation or of its principal office; subject such banks to regulation by the terms of pertinent statutes, and by a State Department of Banking and by the Comptroller of the Currency, in the case of national banks; and require and provide for frequent periodical examination of such banks. Such state and national banks cannot transact business outside the state of incorporation and generally are not permitted to qualify to transact business in other states (R. 28).

The business of banking is of a highly specialized character. It serves all business institutions and most individuals. The insolvency of a bank has more far-reaching and disastrous effect upon the members of the community in which it is located than the insolvency of almost any commercial corporation. Substantially all the deposits of the Montana and North Dakota banks involved are from

local sources and substantially all their loans are made to local persons (R. 28).

No dispute exists as to the value of the Montana and North Dakota bank shares assessed or as to the amount of the Minnesota assessment thereupon, if it be held that that assessment by Minnesota is constitutional.

Since the facts concerning appellant's activities in Minnesota are immaterial to the consideration of appellant's first constitutional argument, viz., that only one state can constitutionally impose a property tax and that in the case of state bank shares such state is the state of incorporation of the bank, appellant does not at this point set forth the facts concerning such activities. A statement thereof, however, will be found beginning on page 25 of this brief preceding appellant's argument that its shares in Montana and North Dakota state banks have a situs for tax purposes in the respective states of incorporation of the banks.

SPECIFICATION OF ERRORS.

The appellant specifies the following assigned errors:

1. The Supreme Court of the State of Minnesota erred in holding and deciding that the taxation, under the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927*, by the State of Minnesota of shares of stock owned by appellant, First Bank Stock Corporation, in banks organized under the laws of Montana and North Dakota was not the taxation of property having a situs without the State of Minnesota and was not a taking of First Bank Stock Corporation's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of Minnesota erred in

holding and deciding that the taxation, under the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927*, by the State of Minnesota of shares of stock owned by appellant, First Bank Stock Corporation, in banks organized under the laws of Montana and North Dakota was not a denial to First Bank Stock Corporation of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Minnesota erred in holding and deciding that the simultaneous imposition of property taxes by more than one state upon the same property of the appellant, First Bank Stock Corporation, is not a deprival of First Bank Stock Corporation's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of the State of Minnesota erred in holding and deciding that where the state of incorporation of a bank imposes a tax upon its shares, regardless of the residence of the owner thereof, a tax upon those shares by another state is not a taking of property without due process of law and is not a denial of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Minnesota erred in holding and deciding that the situs of shares of stock owned by appellant, First Bank Stock Corporation, on May 1, 1934, in state banks of Montana and North Dakota was in Minnesota and that the State of Minnesota had power to assess and levy a property tax upon said shares.

6. The Supreme Court of the State of Minnesota erred

in holding and deciding that shares of stock in a bank organized and existing under the laws of a state of the United States are subject to property taxation imposed by a state other than the state under whose laws the bank is organized.

7. The Supreme Court of the State of Minnesota erred in not holding and deciding that the domicile of appellant, First Bank Stock Corporation, on May 1, 1934, was in the State of Delaware and not elsewhere.

8. The Supreme Court of the State of Minnesota erred in reversing the order of the District Court and in rendering judgment for the State of Minnesota and against appellant, First Bank Stock Corporation.

SUMMARY OF ARGUMENT.

I. (a) Only one state can constitutionally impose a property tax upon intangibles.

Following the doctrine of the recent inheritance tax cases in this Court, the case of *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, held that intangibles enjoy an immunity against property taxation at more than one place.

(b) In the case of state bank shares, it is the state of incorporation of the bank which can impose a property tax, and not the state of domicile of the shareholder or of the business situs of the shares.

The inheritance tax cases are distinguishable.

State bank shares are highly localized in the state of incorporation and practical considerations of wisdom, convenience and necessity require them to be taxed there. Some three-fourths of the states tax shares of banks located therein on an ad valorem basis, whether or not owned by residents. Ad valorem taxation of national bank shares will be

invalid under Section 5219 of the Revised Statutes if a different rule is applied to state bank shares. The only property tax which the state of incorporation in fact, though not in law, can collect from its banks, is upon the bank's shares. Congress has declared that practical considerations require property taxation of national bank shares at the location of the bank, and not elsewhere. As stated in *First National Bank of Boston vs. Maine* (1932), 284 U. S. 312, selection of the state of incorporation is fortified by the laws of the thirty-four states which provide for ad valorem taxation at the location of the banks and not elsewhere. Any other rule introduces a fortuitous element of inequality (the relative tax burdens at the location of the bank and elsewhere) in the long standing policy of placing state and national banks on an equal footing as to taxation. Shares of state banks are as much localized as memberships in grain and stock exchanges. See *Rogers vs. Hennepin County* (1916), 240 U. S. 184; *People ex rel. Whitney vs. Graves* (1937), ... U. S. .....

The question is an open one in this Court:

Corry vs. Baltimore (1905), 196 U. S. 466.

Hawley vs. City of Malden (1914), 232 U. S. 1.

II. Appellant's state bank shares have a business situs in the respective states of incorporation, and the taxing jurisdiction which is both the state of incorporation and of business situs will be preferred over the jurisdiction in which the owner is domiciled.

ARGUMENT.

I. (a) Only One State Can Constitutionally Impose a Property Tax Upon Intangibles.

The tax which the State of Minnesota in this case is seeking to impose is a property and not an excise tax. *State of Minnesota vs. First Bank Stock Corporation* (1936), ... Minn. ...., 267 N. W. 519, 521 (R. 107). The taxes imposed upon these bank shares by the States of Montana and North Dakota are also property taxes. Compiled Laws North Dakota (1913), as amended, Sections 2115 (1) to 2117; Revised Codes of Montana of 1921, Section 2067, as amended. Double taxation, therefore, exists if the taxes collected by Montana and North Dakota and the Minnesota tax here in question are all constitutionally imposed. *State vs. First Bank Stock Corporation* (1936), ... Minn. ...., 269 N. W. 37 (R. 118).

Until recent years it was the accepted doctrine sustained by many decisions of this Court that intangible personal property could constitutionally be subjected to a property tax by more than one state. Foreshadowed, however, by the recent series of inheritance tax cases,* this Court, in *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, clearly and unequivocally held that intangibles are subject to a property tax by one jurisdiction only. In that case this Court stated (298 U. S. 208):

> "First.—The tax is not a privilege or occupation tax. It is not a tax on net income. See *Hans Rees' Sons vs. North Carolina,* 283 U. S. 123, 133. It is an *ad valorem* property tax. We have held that it is essential to the

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*Farmers Loan & Trust Co. vs. Minnesota (1930), 280 U. S. 204;
Baldwin vs. Missouri (1930), 281 U. S. 586;
Beidler vs. South Carolina Tax Commission (1930), 282 U. S. 1;
First National Bank of Boston vs. Maine (1932), 284 U. S. 312.

validity of such a tax, under the due process clause, that the property shall be within the territorial jurisdiction of the taxing state. This rule receives its most familiar illustration in the case of land. The rule has been extended to tangible personal property which is thus subject to taxation exclusively in the State where it is permanently located, regardless of the domicile of the owner. *Union Refrigerator Transit Co. vs. Kentucky,* 199 U. S. 194, 204, 206; *Frick vs. Pennsylvania,* 268 U. S. 473, 489. We have said that the application to the States of the rule of due process arises from the fact 'that their spheres of activity are enforced and protected by the Constitution and therefore it is impossible for one State to reach out and tax property in another without violating the Constitution.' *United States vs. Bennett,* 232 U. S. 299, 306. Compare *Burnet vs. Brooks,* 288 U. S. 378, 401. When we deal with intangible property, such as credits and choses in action generally, we encounter the difficulty that by reason of the absence of physical characteristics they have no situs in the physical sense, but have the situs attributable to them in legal conception. Accordingly we have held that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the owner's domicile for purposes of taxation. *Farmers Loan and T. Co. vs. Minnesota,* 280 U. S. 204, 211. And having thus determined 'that in general intangibles may be properly taxed at the domicile of their owner,' we have found 'no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.' *Id.,* p. 212. The principle thus announced in *Farmers Loan & T. Co. vs. Minnesota,* has had progressive appli-

cation. *Baldwin vs. Missouri*, 281 U. S. 586; *Beidler vs. South Carolina Tax Commission*, 282 U. S. 1; *First Nat. Bank vs. Maine*, 284 U. S. 312, 328, 329."

Further, in the *Wheeling Steel Corporation* opinion (298 U. S. 214, 215, and 216), this Court pointed out that the West Virginia statute, as construed by the Supreme Court of that state, permitted the deduction of intangible property assessed for taxation in Ohio. After stating that the record showed no facts establishing the situs of any other intangible property of the corporation in any state other than West Virginia, the opinion states (298 U. S. 216):

"The decision in the instant case, as we have seen, is not that the statutes require taxation in West Virginia of all of the intangibles of appellant, without due regard to the place where they may properly be deemed to be localized, but only of such intangibles as upon the facts and the law, according to the course of business, may be deemed within the jurisdiction of the state."

The inevitability of the doctrine of the *Wheeling Steel Corporation* case was recognized prior to that decision. See *Rottschaefer, State Jurisdiction to Impose Taxes* (1933), 42 Yale Law Journal, 305 at pages 311, 320-322.

Following the inheritance tax cases in this Court, courts in recent years have held that the Fourteenth Amendment to the United States Constitution prevents double property taxation of intangibles.

In the case of *Commonwealth vs. Appalachian Electric Power Co.* (1932), 159 Va. 462, 166 S. E. 461, certiorari denied (1933), 288 U. S. 613, a Virginia corporation owned certain bonds issued by its subsidiary corporations and had deposited them with a New York trust company as trustee under a trust indenture in the usual form securing an issue

of bonds of the Virginia corporation. The State of Virginia imposed a property tax on the Virginia corporation because of its ownership of such bonds. The State Supreme Court affirmed the decision of the trial court directing a refund of that tax. The Court cited the United States Supreme Court inheritance tax cases above mentioned and held that only one state could impose a property tax and that, under the circumstances of the case, the State of New York and not the State of Virginia had the power to impose that tax, saying (166 S. E. 463):

> "The conclusion from these opinions summarized by counsel for petitioner seem inescapable: (1) That no property can be subjected to taxation by more than one state; (2) that this rule likewise applies to a tax on inheritances; (3) that the tax situs of tangibles (like real estate) is in the state where they are located, the fiction of *mobilia sequuntur personam* being no longer applicable to tangibles; (4) that, where intangibles form the basis of an inheritance tax, this fiction applies, and, such tax is properly imposed in the state of the domicile of the decedent; (5) that, where intangibles are sought to be taxed, the fiction of *mobilia sequuntur personam* may be applied, but this fiction must give way to the fact of legal title, possession, and control in another state."

In the case of *Miami Coal Company vs. Fox* (1931), 203 Ind. 99, 176 N. E. 11, the Court held that a property tax could not, under the Fourteenth Amendment, be imposed constitutionally upon an Indiana corporation's property having a situs in Illinois. The case involved an Indiana corporation engaged in the business of mining and selling coal. Its mines were located in Indiana but its sole business in that state was the mining and shipping of coal. All its coal

was sold through its office in Chicago, where all collections were made and all bills paid. Its accounts receivable were taxed in Illinois and the Court held invalid the attempt of the State of Indiana to impose a property tax on those accounts receivable, the accounts receivable not being within the jurisdiction of Indiana.

In *Smith vs. Ajax Pipe Line Co.* (C. C. A. 8th, January 22, 1937, and not yet officially reported), the Court held that but one situs for the taxation of intangibles exists, citing the *Wheeling Steel Corporation* case, *Senior vs. Braden* (1935), 295 U. S. 422, *infra*, and the inheritance tax cases.

Many of the earlier decisions of this Court unequivocally state that the Fourteenth Amendment does not guarantee exemption from double property taxation. *Cream of Wheat Company vs. Grand Forks* (1920), 253 U. S. 325; *Citizens National Bank vs. Durr* (1921), 257 U. S. 99. All these cases, however, must be regarded in the light of the doctrine laid down by the inheritance tax cases and as overruled by *Wheeling Steel Corporation vs. Fox, supra.* In commenting on *Citizens National Bank vs. Durr, supra*, in the case of *People ex rel. Whitney vs. Graves,* ....U. S..... (decided by this Court on January 4, 1937, and not yet officially reported), this Court stated that what the Court there said must be read in the light of the inheritance tax cases and the *Wheeling Steel Corporation* case.

The Supreme Court of Minnesota in its first opinion in this case (267 N. W. 519, 526, (R. 117)) expressly held that it did not determine this constitutional question of double taxation. That opinion was written before the decision of this Court in the *Wheeling Steel Corporation* case. The appellant in its petition for reargument to the Minnesota Supreme Court pointed out that this constitutional question had been authoritatively determined by the decision in the

Wheeling Steel Corporation case. However, the two later opinions in this case do not mention the *Wheeling Steel Corporation* case and the decision of the Minnesota Supreme Court is, therefore, based on the doctrine that double property taxation *is* constitutional and is not based on the proposition that in choosing between the state of incorporation on the one hand and the state of domicile or business situs on the other hand, the state of incorporation is not to be preferred.

We respectfully submit that the Supreme Court of the State of Minnesota erred in its holding that double property taxation is not forbidden by the Fourteenth Amendment to the Constitution.

I. (b) In the Case of State Bank Shares, It Is the State of Incorporation of the Bank Which Can Impose a Property Tax, and Not the State of Domicile of the Shareholder or of the Business Situs of the Shares.

Accepting the rule that only one state can constitutionally impose a property tax on intangibles, the question remains as to which state has such power to tax *state bank shares*. This requires a selection between the state of incorporation, the state of domicile of the shareholder, and the state in which the shares may have a business situs. For the reasons hereinafter set forth, we believe that it is the state of incorporation and not the state of the domicile of the shareholder or of the business situs of the shares which has the power to impose such a tax. We here assume that the state of incorporation of the bank is not the state in which is located the business situs of the bank shares, although later in this brief we believe that we have sub-

stantiated that, in the case at bar, the business situs of the state bank shares is in the state of incorporation.

The inheritance tax cases establish the rule that, with an exception in favor of the state of business situs, only the state of domicile of the owner can impose an inheritance tax upon intangibles. By no means does it follow that the state of domicile or the state of business situs is the one which in all cases can constitutionally impose a *property* tax. Jurisdiction to impose an *inheritance* tax depends on which state has jurisdiction of the transfer of the property at death, and such state, of course, in the case of intangibles, is the state of the domicile of the holder or of the business situs of the intangibles. Jurisdiction to impose a *property* tax, on the other hand, depends on the place where the property is habitually employed, and such jurisdiction must be consistent with the like jurisdiction of other states. *Johnson Oil Refining Company vs. Oklahoma* (1933), 290 U. S. 158.

In the case at bar the foreign bank shares were not in any manner or at any time employed in Minnesota. The jurisdiction of Minnesota must be determined on a basis which is consistent with the jurisdiction of the states of incorporation of the banks. Here the states of incorporation have asserted jurisdiction to tax. The investment represented by the bank shares is in the states of incorporation. Those states give the essential protection to the bank shares which, in final analysis, is the ultimate basis of property taxation.

It is true that in the *Wheeling Steel Corporation* case this Court, after holding that only one state can tax intangibles, held that, under the circumstances of that case, such state was the state of the "commercial domicile" of the taxpayer. That case involved, however, the taxation of accounts re-

ceivable and bank deposits, not of shares of stock, and particularly not of shares of stock of state banks. The business practices of the *Wheeling Steel Corporation* resulted in all contracts being entered into in West Virginia and substantially all moneys being received and paid out from West Virginia, and this Court held that the accounts receivable arising from such contracts and the bank deposits, under such circumstances, were taxable in West Virginia.

The case of *Senior vs. Braden* (1935), 295 U. S. 422, is an illustration of the fact that the state of domicile is not preferred, for in that case the state of domicile was not permitted to impose a property tax on the resident beneficiary of a trust, the trust property being real estate without Ohio.

The existence of jurisdiction to tax the shares of the state banks here involved will be determined upon practical consideration of wisdom, convenience, and justice, and so as to avoid injustice and oppressive consequences, for:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences."
>
> *Farmers Loan & Trust Co. vs. Minnesota (supra),* at page 212 of 280 U. S.

> "Practical considerations of wisdom, convenience and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the states have adopted that rule by their reciprocal inheritance tax statutes."
>
> *First National Bank vs. Maine (supra),* at pages 330, 331 of 284 U. S.

The jurisdiction of the state wherein a national bank is located to tax the shares thereof has been upheld by the Supreme Court of the United States in *Tappan vs. Merchants National Bank* (1873), 19 Wallace 490. What is there said in respect of the effect of the statutes establishing the location of a bank as the place where bank shares may be taxed and in respect of the establishment of situs by operation of law is applicable here (pages 499, 500 of 19 Wallace):

> "Shares of stock in National banks are personal property. They are made so in express terms by the act of Congress under which such banks are organized. *They are a species of personal property which is, in one sense, intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purposes of taxation, and give them a situs of their own.* This has been done. By section forty-one of the National Banking Act, it is in effect provided that all shares in such banks, held by any person or body corporate, may be included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed under State authority, at the place where the bank is located, and not elsewhere. *This is a law of the property. Every owner takes the property subject to this power of taxation under State authority, and every nonresident, by becoming an owner, voluntarily submits himself to the jurisdiction of the State in which the bank is established for all the purposes of taxation on account of his ownership. His money invested in the shares is withdrawn from taxation under the authority of the State in which he resides and submitted to the taxing power of the State where, in contemplation of the law, his investment is*

located. The State, therefore, within which a National bank is situated has jurisdiction, for the purposes of taxation, of all the shareholders of the bank, both resident and non-resident, and of all its shares, and may legislate accordingly." (Italics supplied.)

The appellant contends that the states of incorporation of the banks, the shares of which are here involved, alone have jurisdiction to tax those shares. The uncontroverted facts show that in the exercise of a long established system of taxing bank shares, uniformly followed by the states which tax such shares on an ad valorem basis, the states of incorporation have separated the shares from the person of the owner and the owner has taken and now holds them subject to that action. The shares, being in the state of incorporation, will not be held to be elsewhere.

In view of the rule of immunity from multi-state taxation and the fact that the investment represented by the shares involved is actually in the state of incorporation, practical considerations of wisdom, convenience, and justice require the conclusion that the state of incorporation alone has the power to tax. The following is a summary of the salient characteristics of state banks which we believe establish these contentions:

1. State banks have a peculiarly close relation with the state which creates them, a far closer connection than has the ordinary commercial organization. A state bank may not have an office outside the state of organization. It cannot do business outside the state and it generally cannot qualify to transact business in any other state. The interest of the public and therefore of the state in a state bank is, perhaps, more immediate and direct than in the case of any other corporation. All its activities are very minutely regu-

lated by statute and by the rules, regulations, and orders of the state banking authorities. Its affairs are periodically at frequent intervals examined by the state banking authorities. The business of banking is highly specialized. In a civilized community, the business of banking is perhaps the most indispensable of all. It serves all business and most individuals. The failure or insolvency of a bank has most disastrous effects upon the community it serves, affecting business and individuals far more widely and seriously than the failure of almost any commercial corporation. Above all, the business of a bank is more localized than almost any other business. Its deposits are substantially all from local sources and its loans are for practical purposes all made within its immediate community. No other business institution is more closely localized and no other is of such widespread and fundamental interest to its community.

2. Some three-fourths of the States of the Union tax bank shares on an ad valorem basis and this has been the universal and continued practice for generations. Revenue from this source has always been considered to be an integral part of the financial system of the state of incorporation. If the state of the domicile of a shareholder can tax the shares and the state of incorporation cannot, the result will be a widespread dislocation of the revenue from this source from the locality in which the bank's operations are carried on to the domicile of the shareholders. "Practical considerations of wisdom" dictate the choice of the state of incorporation rather than the state of the domicile or of business situs.

3. Under Section 5219 of the Revised Statutes of the United States, U. S. Code, Title 12, Section 548, as amended, a property tax on national bank shares may be imposed

at a rate not in excess of the rate on other moneyed capital, in the hands of individual citizens of the taxing state, coming into competition with the business of national banks. Shares of state banks are certainly moneyed capital coming into competition with national banks. *First National Bank vs. Anderson* (1926), 269 U. S. 341, 348. If, then, Montana and North Dakota may not constitutionally tax shares of its banks held by non-residents, we submit that it cannot tax the shares of *national* banks located within its borders, as to do so would make the tax upon national bank shares discriminatory and invalid under Section 5219. *Iowa-Des Moines National Bank vs. Bennett* (1931), 284 U. S. 239. If, therefore, this Court holds that Minnesota, and not the state of incorporation, may tax the shares here in question, the result will be to render invalid the laws of all the states which, at the present time, impose an ad valorem tax upon national bank shares.

4. Under the National Banking Act, the property of the national bank itself, except its real estate, cannot be taxed. Revised Statutes, Section 5219, as amended; U. S. Code, Title 12, Sec. 548, as amended. Since the state bank must be able to compete with the national bank, the state is in fact, though not in law, prohibited from taxing state banks except as to real estate. The tax which the ad valorem states impose upon bank shares is, therefore, their only method of obtaining revenue from a state bank. The tax on state bank shares, collected by the bank or a lien upon its assets, is, in fact, although not in law, a tax on the property of the bank and the only such tax which the state of incorporation can collect. If this right is taken away from the state of incorporation as to non-resident stockholders, the state which retains the ad valorem system of taxation is unable to obtain any tax revenue whatsoever from

that portion of the property of the bank represented by the shares owned by non-residents. This would be a gross injustice to the state of incorporation which gives a far greater degree of protection and service to the economic entity made up of the bank and its shareholders than does the state of domicile of a non-resident shareholder.

5. Congress can deny to the states the power to tax national banks or their shares. It properly felt, however, that national banks should bear their just share of taxation. Accordingly, it desired to permit the taxation of national bank shares. In surveying the various methods of direct property taxation of bank shares, Congress deemed most equitable the system of taxation at the location of the bank without regard to the domicile of the holder. In 1864, Congress incorporated in the National Banking Act, 13 Stat. 99, 112, permission to the states to impose an ad valorem tax on national bank shares at the location of the bank and forbade any other state to impose such a tax. This, then, is a declaration by Congress which has endured for seventy years that practical considerations of wisdom and convenience require taxation of bank shares in the state of incorporation and not elsewhere.

6. The Montana and North Dakota statutes cited above follow this universal practice of ad valorem states, impose a property tax upon bank shares at the location of banks, and expressly provide that such shares shall not be taxed elsewhere. Thus, as stated in *First National Bank of Boston vs. Maine, supra,* page 331 of 284 U. S., selection of the state of incorporation is fortified by the statutes not only of Montana and North Dakota, but of all the other ad valorem states, providing for taxation only at the location of the bank, and by the National Banking Act.

7. As above stated, the age-old policy of the Federal Government and of the states has been to place state and national banks upon an equal footing with reference to taxation. In the case of national banks, shares may be taxed only at the location of the bank. If the state of domicile rather than the state of incorporation is selected as the state having jurisdiction to tax the shares of state banks, an element of inequality is introduced. A new element, the domiciles of its shareholders, will come into existence. In some instances the rate of taxation will be lower in the state of incorporation than in the state of domicile, which will induce the stockholders to nationalize such bank; in other instances the converse will be true and stockholders will desire a state rather than a national bank. Thus a fortuitous circumstance will be added to those which now govern the choice between a state and a national bank and the policy of the United States and of the states with reference to equality will be to that extent disrupted.

Shares of state banks are localized to a degree comparable to that of memberships in grain and stock exchanges. Based in part upon the local character of a membership in a Minneapolis stock exchange and in part on the doctrine of *Corry vs. Baltimore* (1905), 196 U. S. 466, this Court sustained property taxation of memberships in the Minneapolis Chamber of Commerce even as to non-resident members. *Rogers vs. Hennepin County* (1916), 240 U. S. 184. In *People ex rel. Whitney vs. Graves, supra*, income taxation by the State of New York of a profit arising from a New York stock exchange membership owned by a resident of Massachusetts was sustained because of the localized character of the membership. In view of the Court's reference in the opinion to double taxation, to the doctrine of *Farmers Loan & Trust Co. vs. Minnesota, supra*, and to the

Wheeling Steel Corporation case, the fair implication of the decision is that only New York could impose a property tax on the membership. We submit that in the case of state bank shares there are present equally cogent reasons for holding them so localized in the state of incorporation as to be taxable there and only there.

The question as to which state has such power is an open one under the decisions of this Court. *Corry vs. Baltimore, supra,* held that the state of incorporation may impose a property tax on non-resident stockholders on account of the stock held by them. *Hawley vs. City of Malden* (1914), 232 U. S. 1, on the other hand, held that the state of domicile of a stockholder may impose a property tax on stock of a foreign corporation, but expressly left open the question whether such state can tax where the state of incorporation by statute fixed the taxable situs of the stock within its borders. Now that only one state can tax, this Court must, we submit, overrule either *Corry vs. Baltimore* or *Hawley vs. City of Malden,* or at least determine the question expressly left undecided in the latter case. Appellant believes that in the case of state bank shares the doctrine of *Corry vs. Baltimore* should be sustained.

II. Appellant's State Bank Shares Have a Business Situs in the Respective States of Incorporation, and the Taxing Jurisdiction Which Is Both the State of Incorporation and of Business Situs Will Be Preferred Over the Jurisdiction in Which the Owner Is Domiciled.

In the preceding sections of this brief, appellant has assumed that its state bank shares have a business situs in Minnesota. It is appellant's position, however, that the facts disclosed by the record do not show a business situs of the bank shares in Minnesota, but on the contrary show that the business situs of those shares is at the location of the various banks. In this connection it is necessary to state additional facts concerning the appellant and its affairs:

Appellant was organized under the laws of Delaware in April, 1929, with the name "First Bank Stock Investment Company." It obtained a license to transact business in Minnesota on April 19, 1929. During the summer of 1929 it acquired for cash a majority of the stock of some seventeen national and state banks located in the Ninth Federal Reserve District. In August, 1929, its corporate name was changed to "First Bank Stock Corporation," and it made an offer of its stock to the stockholders of certain Ninth Federal Reserve District banks in exchange for the stock of such banks, which offer was accepted and the exchange consummated in October, 1929 (R. 18).

Shortly after organization it established an executive office in Minneapolis, Minnesota, which has been continued to the present time. During the fall of 1929 and the years 1930 and 1931, the appellant acquired all or part of the stock of various other banks, trust companies, and financial institutions all located in the Ninth Federal Reserve District (R.

18, 19). Finding that it would be necessary, in order to preserve the value of its interest in the stocks of such banks, to organize a department for their examination and for the giving of advice to such banks with respect to their operations, such department was organized and conducted by the appellant until December 31, 1931 (R. 20). During this period the appellant, by its employees, periodically examined and audited the banks in which it held stock, received reports of their operations, and advised them with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, at times furnished them with advertising material, and, in a number of instances, acted as their agent in the purchase and sale of securities and commercial paper (R. 20). On January 1, 1932, all such activities were taken over by a wholly owned subsidiary of the appellant organized under the laws of Minnesota (R. 21, 22).

Since January 1, 1932, appellant's only activities have been the holding of meetings of stockholders, directors, and of its executive committee, the receipt of interest and dividends, and the giving of proxies to vote the stock owned by it in such banks (R. 22). The appellant does not, and since January 1, 1932, has not, owed any money and it does not buy and sell securities, except in connection with the investment of its own funds. None of the stocks owned by appellant have ever been pledged or hypothecated in any manner. The appellant does not engage, and has not at any time engaged, in the business of trading in securities (R. 23). The appellant owns certain notes receivable, all of which were obtained by it in connection with the acquisition of stocks owned by it or were purchased from banks in which it held stock. It owns and holds certificates of deposit issued by certain member banks and, as

required by the Banking Act of 1933, holds certain United States Government and other bonds. It owns cash deposited in Minnesota banks and certain real estate which it obtained by reason of the liquidation of banks in which it formerly held stock. At the present time it owns the stock of only two non-banking corporations, one of which is the service corporation above mentioned and the other of which is a corporation engaged in the servicing and liquidation of real estate (R. 22, 23). The appellant maintains a complete set of books entirely separate from the books of any other corporation and kept in its Minneapolis office (R. 24). Entries in such books of account are made by employees of its wholly owned subsidiary, the service company. Banks in Minneapolis and St. Paul act as transfer agent and registrar of its stock, and checks in payment of its dividends are prepared by such banks and are mailed to stockholders by the appellant (R. 24). Certificates representing the bank shares here involved are held by appellant for safekeeping at its Minneapolis office where its seal has at all times been kept (R. 21, 15, 2).

Appellant, for the year 1934, returned for taxation in Minnesota all its taxable money and credits other than the stocks in state banks of other states (R. 15, 16).

The Minnesota Supreme Court by no means held that the corporate existence of appellant's subsidiaries, and of the banks in which it held stock, is in any manner disregarded by the appellant, but did state that it regarded as unimportant the fact that the supervisory services formerly performed by appellant were now performed by a wholly owned subsidiary, stating (269 N. W. 37) (R. 118):

> "Nor do we mean to suggest that the respondent, through the plenary character of its control of its subsidiary banks and the use which it makes thereof, is

> going 'beyond that which is proper on the part of a majority stockholder.' We do regard as unimportant the fact that much of the supervision formerly exercised by respondent directly has been taken over by its wholly owned subsidiary, the 'First Service Corporation.'"

It seems obvious to appellant that an intangible cannot have two business situs. To appellant it is equally apparent that the true business situs of its state bank shares, if one exists, is in the state of incorporation and not in Minnesota. The localized character of state bank shares and the many close practical and legal ties which they have to the state of incorporation have been fully discussed above in our argument that the state of incorporation is the only one which may impose a property tax. No other business corporation is so completely localized. Such shares seem more nearly analogous to memberships in grain and stock exchanges than to shares in an ordinary commercial corporation.

It will be noted that appellant is not engaged in the business of dealing or trading in securities. Its state bank shares have never been sold or pledged or in any manner hypothecated. This case, therefore, is not within the rule of such decisions as *State vs. Harrington* (1923), 68 Montana 1, 217 Pac. 681; *Hill vs. Carter* (C. C. A. 9th, 1931), 47 Fed. (2d) 869 (Cert. denied 284 U. S. 625); *DeGanay vs. Lederer* (1919), 250 U. S. 376, where the use of securities in an active investment business was held to give the securities a business situs at the place of such use. Further, the physical presence of the stock certificates in Minnesota does not, of course, fix their business situs there. *Buck vs. Beach* (1907), 206 U. S. 392, 408; *State vs. Great Northern Railway Company* (1918), 139 Minn. 469, 472, 167 N. W. 297.

Previously in this brief we have argued that the state of incorporation of state banks is the one having jurisdiction to tax the shares thereof, and not the state of business situs or of domicile of the owner. In this case, however, and, for that matter, in the case of all state bank shares, the state of incorporation is, we believe, also the state in which is located the business situs of the bank shares. The choice lies, therefore, between the state of incorporation *and* of business situs, on the one hand, and the state of domicile of the owner, on the other hand. That the state of business situs is to be preferred over the state of domicile is shown by the recognition given by this Court to business situs in the inheritance tax cases and, in the *Wheeling Steel Corporation* case, *supra*, by the exception from West Virginia property taxation of intangible property having a business situs in Ohio. (See p. 214 of 298 U. S.)

The question whether appellant had a commercial domicile in Minnesota is, therefore, immaterial, and appellant merely points out that no case involving property taxation has been found by appellant deciding that a holding company, such as appellant, has a domicile of any character outside the state of its incorporation. Appellant's situation is distinguishable from that of the Wheeling Steel Corporation which was actively engaged in business in West Virginia.

Taxation on Theory of "Increment through Amalgamation."

The Supreme Court of Minnesota in its first opinion (267 N. W. 519 at page 523 (R. 112), stated that the stocks held by appellant in the various banks, by reason of the amalgamation of the ownership thereof, had a value in excess of the value of the constituent banks. The Court further stated that such increment of value had a situs in Minnesota and was there subject to taxation, and then stated that if the tax sought to be imposed in the case at bar were not sustained, such increment of value would wholly escape taxation.

The appellant respectfully points out that there is nothing whatsoever in the record to show that the value of all the appellant's stock holdings is greater than the aggregate value of the unit banks considered separately.

Even if such an increment in value did exist, that is not the value which is being taxed in the case at bar. The tax here is a second and duplicate tax upon the shares of certain foreign state banks owned by appellant, and this value has no relation whatsoever to the value of the increment arising from the ownership of stocks of a number of banks. To attempt to measure the increment in value of a number of national and state bank stocks by taking the entire value of the stocks of certain foreign state banks would be arbitrary, capricious, and invalid. Moreover, many of the banks in which appellant holds stocks are national banks, located in other states, and attempted taxation of an increment in value of such stocks by the State of Minnesota would be invalid under the National Banking Act.

The increment in value of which the Minnesota court speaks is the very property which Section 2021, *Mason's Minnesota Statutes of 1927,* was designed to reach, which

statute the Minnesota Supreme Court recently declared to have been repealed by implication. *Bemis Bro. Bag Co. vs. Wallace* (1936), 197 Minn....., 266 N. W. 690; *S. H. Clausin & Co. vs. Wallace* (1936), 197 Minn....., 266 N. W. 690. It will further be noted that the increment in value, if any did exist, would be reflected in the market value of appellant's stock, which stock is itself a separate object of taxation.

Accordingly, appellant respectfully submits that the record contains no scintilla of evidence that such an increment in value in fact existed at the time of the assessment of the tax in question, and that even if such increment existed, such fact in no way supports or justifies the imposition of a second and double tax upon appellant's shares of stock in foreign state banks.

CONCLUSION.

The appellant submits that it is the settled doctrine of this Court that only one state can constitutionally impose a property tax on intangibles. In the case of state bank shares, because of their unique characteristics, the state having jurisdiction to tax is the state of incorporation of the bank, and not the state of domicile of the owner or of business situs. Moreover, because of the complete localization of state bank shares, their business situs, if one does exist, is in the state of incorporation. Between the jurisdiction which is both the state of incorporation of the bank and the state in which is the business situs of the shares and the jurisdiction in which the owner is domiciled, it is apparent that the former is to be preferred.

For the foregoing reasons, appellant respectfully prays

that the judgment entered by the Supreme Court of Minnesota in this case be reversed.

Dated February 23, 1937.

Respectfully submitted,

JOHN JUNELL,
CLARK R. FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant,
1300 First Nat'l-Soo Line Building,
Minneapolis, Minnesota.

Of Counsel:

JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, FLETCHER, DORSEY, BARKER & COLMAN.

APPENDIX.

Mason's Minnesota Statutes of 1927, Section 2337:

As used in this section of the word "money" means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word "credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state.

As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three (3) mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, nor to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309 (2322-2330), General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks; provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

Revised Codes of Montana of 1921, as amended, Section 2067:

Every State bank or banking corporation located and doing business in this State, and every private banker doing business in this State, shall be taxable upon the value of all

real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by Section 1999 of the Revised Codes of Montana of 1921, and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessments, adopt the figures disclosed by any prior report made by such bank, banking corporation or private banker to any State or Federal officer pursuant to any State or Federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is as-

sessable and taxable to such bank or banking corporation in this State, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place. The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

Compiled Laws of North Dakota (1913), as amended, Sections 2115 (1) to 2117:

Sec. 2115 (1) Bank and trust company stock; where and at what valuation to be listed. The shares of stock of every bank and of every loan and trust company located in this state whether organized under the laws of this state or the United States or of any other state or country shall be assessed to the individual stockholders or owners thereof at the place where the bank or loan and trust company is located and not elsewhere. Such shares shall be listed and assessed to the owner thereof with reference to their value on the first day of April of each year and shall be taxed at the same rate as other property in the same taxing district is taxed.

(2) Determination of the value of shares of capital stock. On or before the first day of May in each year, the officers of each bank or loan and trust company located in this state shall file a statement with the state tax commissioner and with the county auditor of the county where located, verified by oath, showing the amount and number of shares of capital stock of such bank, loan and trust company, the names and residences of the several stockholders and the amount owned by each; the amount of the corporation's surplus or reserve fund and undivided profits as of April 1st preceding. The value of each share of stock in each bank, loan and trust company, except such as are in liquidation, shall be taken to be the par value thereof, together with its pro rata share of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation, shall be taken to be its pro rata share of the actual value of the assets of such bank, or loan and trust company.

(3) Deduction of real estate and personal property to ar-

rive at taxable value of shares of stock. Real estate owned by any bank or loan and trust company shall be assessed and taxed as other real estate is under this article. Personal property of any bank, loan and trust company, except furniture, fixtures and equipment, shall be returned in the name of the bank or trust company, and shall be assessed and taxed as other personal property is under this article. In determining the taxable value of the shares of stock of such corporation, the tax commissioner shall deduct the net amount of such corporation's investment in real estate and the net amount of its investment in taxed personal property from the aggregate amount of the capital stock, surplus and undivided profits, and the remainder shall be taken as the basis for valuation of such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value, or such other provision of law as may be enacted at this or subsequent sessions of the legislature classifying such property for assessment purposes.

To determine the amount which shall be considered as being invested in real estate, the tax commissioner shall deduct from the total of such investment the amount of investments in real estate where the bank or loan and trust company has sold the real estate under contract whereby the purchaser agrees to pay the taxes assessed against such property.

(4) Computation of value. The tax commissioner shall compute the total net taxable value of the capital stock of each bank or loan and trust company and shall assess such shares of capital stock and shall on or before the first business day in July of each year certify such assessment to the county auditor of the county where such bank or loan and trust company is located.

(5) Computation of net taxable value. The county auditor shall compute the net taxable value of each share of stock in any bank or loan and trust company and shall multiply such value by the number of shares held by each individual stockholder and enter such assessment against the individual stockholder; provided that any solvent bank or loan and trust company may, upon written request of its cashier or other officer, have the amount of the assessment herein provided for against its stockholders assessed against the bank or loan and trust company in its corporate name and the taxes thereon may be paid as other expenses of the bank or loan and trust company are paid. The shares of capital stock in banks or loan and trust companies, not located in this state, but owned in this state, shall not be required to be listed under this article.

(6) Assessing all moneyed capital. All moneyed capital within the meaning of section fifty-two hundred nineteen (5219) of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, national bank, loan and trust company stock is taxed in the same taxing district, and at the actual value of the moneyed capital so invested or at such percentage of actual value as may be provided by law for assessment of bank, loan or trust company stock with similar deductions for investments in real estate and taxed personal property as are allowed by this act in arriving at the net taxable value of bank stock. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized, sworn statement showing the amount of moneyed capital so used.

(7) Refusal to furnish a list of stockholders; penalty. A refusal to furnish the tax commissioner or the county auditor with the list of stockholders and the information required under this act shall be deemed a misdemeanor and any bank or loan and trust company or any officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars.

Sec. 2116. Bank to keep and furnish list of stockholders. In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office.

Sec. 2117. Taxes on bank stock to be a lien on dividends. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the

said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale.